

Application No. 09/841,282  
Amendment dated December 14, 2004  
Reply to Office Action dated September 14, 2004

Docket No. 1232-4709

**REMARKS**

Applicant respectfully requests reconsideration of this application in view of the foregoing amendment and following remarks.

**Status of the Claims**

Claims 1, 2, 4-7, 10-12, 15, 16 and 18-35 are pending in this application. Claims 1, 5 and 26 are independent. All of the pending claims except for claim 25 are rejected. Claim 25 is objected to as being dependent upon a rejected base claim, but indicated as allowable if rewritten in independent form.

By this Amendment, claims 5, 12, 15, 16 and 18-35 are cancelled. Claim 1 is amended. New claims 36-41 are added. No new matter has been added by this amendment.

**Rejections under 35 U.S.C. §112**

Claim 33 has been rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter.

Claim 33 has been cancelled rendering the rejection directed to this claim moot.

Reconsideration and withdrawn of the rejection of claim 33 under 35 U.S.C. §112, second paragraph, is respectfully requested.

**Rejections under 35 U.S.C. §102**

Claims 1, 2, 4, 6, 10, 11, 15, 18, 26-31, 34 and 35 have been rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,285,489 to Helsel et al. ("Helsel").

Among the rejected claims, claims 15, 18, 26-31, 34 and 35 are cancelled rendering the rejections directed to these claims moot.

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Claim 1 has been amended incorporating the element of claim 25 which is objected to but indicated as allowable if rewritten in independent form. Accordingly, claim 1 as amended is believed to be allowable.

Claims 2, 4, 6, 10 and 11 depends from claim 1 as amended. Accordingly, each of claims 2, 4, 6, 10 and 11 is also believed to be allowable for at least the similar reasons as for claim 1.

Claims 5, 12, 19-21 and 24 have been rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,585,379 to Yokoyama et al. ("Yokoyama").

Claims 5, 12, 19-21 and 24 are cancelled rendering the rejections directed to these claims moot.

Reconsideration and withdrawal of the rejection of claims 1, 2, 4, 6; 10, 11, 15, 18, 26-31, 34 and 35 under 35 U.S.C. §102(b) is respectfully requested.

Claims 36-41 have been added to recite the claimed invention in an alternative manner. Specifically, added independent claim 36 recites an optical modulation element having a plurality of reflecting surfaces and means for controlling positions of the reflecting surfaces. Added claim 36 further recites that the plurality of reflecting surfaces are capable of forming a reflective diffraction grating which generates diffraction light on the basis of incident light by control of the positions of the plurality of reflecting surfaces by means of the means for controlling. With the invention as featured in new claim 36, it is possible to diffract incident light by controlling positions of plural reflecting surfaces of the optical modulation element.

Applicant believes that none of the cited references (i.e., Helsel and Yokoyama) shows or suggests the feature of claim 36 as discussed above. Claim 36 and its dependent claims (i.e., claims 37-41) are accordingly believed to be allowable for at least the reasons discussed above.

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Applicant believes that the application is in condition for allowance and such action is respectfully requested.

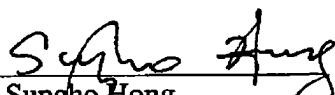
**AUTHORIZATION**

No petitions or additional fees are believed due for this amendment and/or any accompanying submissions. However, to the extent that any additional fees and/or petition is required, including a petition for extension of time, Applicant hereby petitions the Commissioner to grant such petition, and hereby authorizes the Commissioner to charge any additional fees, including any fees which may be required for such petition, or credit any overpayment to Deposit Account No. 13-4500 (Order No. 1232-4709). A DUPLICATE COPY OF THIS SHEET IS ENCLOSED.

An early and favorable examination on the merits is respectfully requested.

Respectfully submitted,  
MORGAN & FINNEGAN LLP

Dated: December 14, 2004

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